



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 30 2007

Mr Bill Maers
Campaign Manager
Cubin for US Congress
P O. Box 4657
Casper, WY 82604

RE: MUR 5889
Republicans for Trauner et al.

Dear Mr Maers

This is in reference to the complaint you filed with the Federal Election Commission on December 13, 2006, concerning Republicans for Trauner and Roger Shanor, in his official capacity as treasurer ("RFT") and several individuals related to RFT. The Commission found that there was reason to believe RFT violated 2 U.S.C. §§ 432(e)(4), 433(a), 434(a)(4), 434(g)(1), 441a(f), 441b(a) and 441d, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") On November 23, 2007, a conciliation agreement signed by RFT was accepted by the Commission. In addition, the Commission found no reason to believe that Stephen Simonton or J Nichols Patrick violated the Act in connection with this matter. Accordingly, the Commission closed the file in this matter on November 23, 2007.

Documents related to the case will be placed on the public record within 30 days See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed Reg 70,426 (Dec 18, 2003) A copy of the agreement is enclosed for your information Also enclosed are Factual and Legal Analyses that explain the Commission's determinations regarding Stephen Simonton and J. Nichols Patrick

27044182667

MUR 5889
Mr Bill Maers
Page 2

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen". The signature is fluid and cursive, with the first name "Mark" and last name "Allen" clearly distinguishable.

Mark Allen
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analyses

. 27044182668

RECEIVED
FEC MAIL CENTER

2007 OCT -1 AM 8:42

MUR 5889

2007 OCT -4 P 1:07

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Republicans for Trauner and Roger Shanor, in his)
official capacity as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by a complaint filed with the Federal Election Commission

("Commission") by Bill Maiers, campaign manager for Cubin for Congress, and by information
ascertained by the Commission in the normal course of carrying out its supervisory
responsibilities. The Commission found reason to believe that Republicans for Trauner and
Roger Shanor, in his official capacity as treasurer, ("Respondents" or "Committee") violated
2 U.S.C. §§ 432(e)(4), 433(a), 434(a)(4), 434(g)(1), 441a(f), 441b(a) and 441d.

NOW, THEREFORE, the Commission and Respondents, having participated in informal
methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as
follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of
this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.
§ 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action
should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Republicans for Trauner is a political committee within the meaning

27044182669

1 of 2 U.S.C. § 431(4) and is a “single candidate committee,” defined at 11 C.F.R. § 100.5(e)(2) as
2 a “political committee other than a principal campaign committee which makes or receives
3 contributions or makes expenditures on behalf of only one candidate.”

4 2. Roger Shanor is the treasurer of Republicans for Trauner.

5 3. Respondents were active in the 2006 general election for U.S. Representative
6 from Wyoming.

7 Use of a Candidate’s Name

8 4. The Federal Election Campaign Act of 1971, as amended, (“the Act”)
9 prohibits the use of a candidate’s name in the name of a non-authorized committee. 2 U.S.C.
10 § 432(e)(4). Republicans for Trauner, a non-authorized committee, uses the name of a candidate,
11 Gary Trauner, in its name, and none of the exceptions set forth in 11 C.F.R. § 102.14(b) apply.

12 Statement of Organization

13 5. The Act defines “political committee” as any group of persons which receives
14 contributions aggregating in excess of \$1,000 during a calendar year or which makes
15 expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A).
16 According to their disclosure reports, Respondents first received over \$1,000 in contributions on
17 September 28, 2006, and thus exceeded the statutory threshold on that day. The Act further
18 requires committees such as Respondents to file a statement of organization with the
19 Commission within ten days after becoming a political committee. 2 U.S.C. § 433(a). Thus,
20 Respondents were required to file a statement of organization with the Commission by
21 October 8, 2006. Respondents did not file a statement of organization until November 2, 2006.

27044182670

Pre-General Election Report and Year End Report

6. Based on the timing of Respondents' activity, Respondents should have next filed a Pre-General Election Report. Committees not authorized by candidates shall file a Pre-Election Report, which shall be filed no later than the 12th day before any election in which the committee makes contributions or expenditures in connection with the election if such disbursements have not been previously disclosed. Such report shall disclose all receipts and disbursements as of the 20th day before the election. 2 U.S.C. § 434(a)(4)(A)(ii); 11 C.F.R. § 104.5(c)(1)(ii). Respondents made their first expenditure, \$1,200 for a newspaper advertisement, on October 12, 2006. Because Respondents made this expenditure on behalf of Gary Trauner, a candidate in the November 2006 election, Respondents should have filed a Pre-General Election Report, which was due by October 26, 2006, covering their activity through October 18, 2006, which included \$19,300 in contributions and \$1,200 in expenditures. *See* 2 U.S.C. § 434(a)(4)(A)(ii).

7. Subsequently, Respondents timely filed their 2006 Post-General Election Report, but did not timely file their 2006 Year End Report, which was due by January 31, 2007. *See* 2 U.S.C. § 434(a)(4)(A)(i). The Commission's Reports Analysis Division sent a Notice of Failure to File to Respondents on March 7, 2007, and Respondents filed their Year End Report on April 4, 2007. The Report discloses no receipts or disbursements during the covered period.

24-Hour Independent Expenditure Reports

8. An independent expenditure ("IE") is an expenditure for a communication that is not coordinated and that expressly advocates the election or defeat of a clearly identified candidate for Federal office. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. Respondents disclosed

27044182671

making \$26,622.52 in IEs on its Form 5 filed with the Commission on November 3, 2006, and on its Post-General Election Report. However, Respondents made most of their IEs within 20 days of the general election and, therefore, should have also filed 24-Hour IE reports. *See* 2 U.S.C. § 434(g)(1). This provision requires persons making IEs aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election to file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1)(A). Respondents did not timely disclose the following IEs by filing 24-Hour reports:

Date	Amount	Purpose	Payee
10/25/2006	\$ 260.00	Mail piece	Snowy Range Graphics
10/25/2006	\$15,771.12	Mail piece	AMBI
10/27/2006	\$ 3,980.00	Radio ads	Cowboy State News Network
10/27/2006	\$ 200.00	Radio ads	KVOW Radio
10/27/2006	\$ 1,000.00	Radio ads	Big Horn Radio Network
11/03/2006	\$ 900.00	Radio ads	Big Horn Radio Network
11/03/2006	\$ 1,238.40	Newspaper ads	Casper Star Tribune
11/03/2006	\$ 696.00	Newspaper ads	Jackson Hole News & Guide
11/03/2006	\$ 849.00	Newspaper ads	Billings Gazette
TOTAL	\$24,894.52		

Disclaimers

9. The advertisements by Respondents, a political committee, were public communications that contained incomplete and missing disclaimers. *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). First, Respondents' newspaper advertisement, titled "'Republicans for Trauner' Believe Wyoming Needs Change," contained a disclaimer, "Paid by Republicans for Trauner PAC." This advertisement, however, fails to state whether it was authorized by any candidate. *See* 2 U.S.C. § 441d(a)(2) and (3). Further, the disclaimer is not set forth in a printed box. *See* 2 U.S.C. § 441d(c)(2).

1 10. Second, Respondents' flyer, titled "Republicans for Trauner," was mailed to
2 22,000 households across Wyoming, contained no disclaimer. Under the Commission's
3 regulations, Respondents' flyer constituted a "public communication." *See* 11 C.F.R. §§ 100.26
4 ("public communication" definition includes "mass mailing") and 100.27 ("mass mailing"
5 defined as mailing by U.S. mail more than 500 pieces of mail matter of an identical or
6 substantially similar nature within any 30-day period). As a public communication by a political
7 committee, the flyer was subject to the Act's disclaimer requirements. *See* 2 U.S.C. § 441d(a)
8 and 11 C.F.R. § 110.11(a)(1).

9 11. Finally, Respondents' radio advertisement contained the disclaimer "This ad
10 is paid for by Republicans for Trauner." Like Respondents' newspaper advertisement, their radio
11 advertisement fails to state whether it was authorized by any candidate. *See* 2 U.S.C.
12 § 441d(a)(2) and (3). Further, the Act requires specific additional disclaimer language for radio
13 (and television) communications that are not authorized by candidates or candidate committees
14 or their agents: "_____ is responsible for the content of this advertising," with the blank to be
15 filled in with the name of the political committee or other person paying for the communication.
16 2 U.S.C. § 441d(d)(2). Respondents' radio advertisement does not contain this language.

17 Receipt of Excessive and Prohibited Contributions

18 12. As a political committee, Respondents should have complied with the
19 contribution limitations and source prohibitions of the Act, which they failed to do. Respondents
20 received \$17,099 in excessives and \$846 in apparent corporate contributions.

21 13. During the 2006 election cycle, the contribution limit for a person giving to a
22 candidate and his or her authorized committees was \$2,100 per election. *See* 2 U.S.C.

27044182673

§ 441a(a)(1)(A). For contributors to Respondents, this limit applies to their aggregate contributions to Respondents and to Trauner for Congress, Gary Trauner's principal campaign committee. The federal disclosure reports filed by Respondents and Trauner for Congress indicate that seven individuals contributed to both committees. Three of these contributors' total contributions to the two committees exceeded the applicable contribution limit of \$2,100 per election:

<u>Name</u>	<u>Amount</u>	<u>Date</u>	<u>Recipient</u>
Armstrong, Geoff	\$2,100	12/25/2005	Trauner for Congress
Armstrong, Geoff	\$2,100	9/11/2006	Trauner for Congress
Armstrong, Geoff	\$ 500	9/28/2006	Republicans for Trauner
Farkas, Andrew	\$2,100	9/29/2006	Trauner for Congress
Farkas, Andrew	\$4,600	10/31/2006	Republicans for Trauner
Morris, Bob	\$1,900	6/14/2006	Trauner for Congress
Morris, Bob	\$2,100	7/10/2006	Trauner for Congress
Morris, Bob	\$ 199	unitemized	Trauner for Congress
Morris, Bob	\$5,000	10/04/2006	Republicans for Trauner
Morris, Bob	\$5,000	10/10/2006	Republicans for Trauner
Morris, Bob	\$2,000	10/30/2006	Republicans for Trauner

14. The Commission's regulations explain the application of contribution limits for contributors who give to political committees which support the same candidate. Pursuant to 11 C.F.R. § 110.1(h), a person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as (1) the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee; (2) the contributor does not give with the

1 knowledge that a substantial portion will be contributed to, or expended on behalf of, that
2 candidate for the same election; and (3) the contributor does not retain control over the funds.
3 The effect of section 110.1(h) is that contributors who give to both the candidate committee and
4 the other committee supporting the same candidate may be subject to the single limit applicable
5 to contributions to the candidate committee.

6 15. Contributions to Respondents do not meet the requirements of section
7 110.1(h) for two reasons. First, Respondents are a "single candidate committee." Respondents'
8 very name, and their activity in the form of independent expenditures on behalf of a single
9 candidate, indicate their status as a single candidate committee. Second, contributors to
10 Respondents knew that their contributions would be contributed to or expended on behalf of
11 Gary Trauner. *See* 11 C.F.R. § 110.1(h)(2). Respondents' name, as well as the solicitation
12 contained in their newspaper advertisement, made clear to contributors that their funds would be
13 spent in support of Gary Trauner. Accordingly, contributions to Respondents count against
14 contributors' section 441a(a) limits for contributions to Trauner for Congress.

15 16. Respondents accepted excessive contributions from the three individuals listed
16 above. *See* 2 U.S.C. § 441a(f) (no political committee shall knowingly accept any contribution in
17 violation of section 441a).

18 Receipt of Corporate Contributions

19 17. Respondents disclosed to the Wyoming Secretary of State the receipt of two
20 corporate contributions, \$696.00 from Treeline Marketing, Inc. and \$150.00 from Rocky
21 Mountain, Inc. Respondents did not disclose to the Commission a \$696.00 contribution from
22 Treeline Marketing, but did disclose a \$696.00 contribution from Dave Solitt, whose employer

27044182675

1 is identified as Treeline Marketing. Respondents did not disclose the \$150.00 Rocky
2 Mountain, Inc. contribution to the Commission; however, Respondents did not itemize to the
3 Commission any contributions as small as \$150.00. *See* 2 U.S.C. § 434(b)(3)(A) (itemization
4 requirement applies to contributions which aggregate above \$200 in a calendar year).

5 18. Respondents accepted corporate contributions. *See* 2 U.S.C. § 441b(a) (no
6 political committee shall knowingly accept any corporate contribution).

7 19. Respondents contend they had no prior experience nor any expertise
8 regarding the Act and that their violations were due to oversights and not an intention to violate
9 the Act. Respondents further contend that promptly upon discovery of their violations, they
10 made every effort to bring the Committee into compliance.

11 V. 1. Based on the foregoing, Republicans for Trauner and Roger Shanor, in his
12 official capacity as treasurer, violated 2 U.S.C. §§ 432(e)(4), 433(a), 434(a)(4), 434(g)(1),
13 441a(f), 441b(a) and 441d.

14 2. Republicans for Trauner and Roger Shanor, in his official capacity as
15 treasurer, will cease and desist from violating 2 U.S.C. §§ 432(e)(4), 433(a), 434(a)(4),
16 434(g)(1), 441a(f), 441b(a) and 441d.

17 VI. Respondents will pay a civil penalty to the Federal Election Commission
18 in the amount of Three Thousand, Six Hundred Dollars (\$3,600), pursuant to 2 U.S.C.
19 § 437g(a)(5)(A).

20 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
21 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
22 with this agreement. If the Commission believes that this agreement or any requirement thereof

27044182676

has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

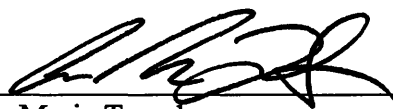
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
~~Acting~~ Associate General Counsel
for Enforcement

11/30/07
Date

FOR THE RESPONDENTS:


(Name)
(Position)

9/19/07
Date

27044182677



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

October 3, 2007

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2007 OCT -4 P 1:07

TWO WAY MEMORANDUM

TO: OGC Docket
FROM: Rosa E. Swinton *RES*
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **Republicans for Trauner**. The check is number **142** dated **September 21, 2007**, in the amount of **\$1,800.00**. A copy of the check and all correspondence are attached. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$ 1,800.00,
the MUR/Case number is 5889 and in the name of Republicans for Trauner.

Please this deposit in the account indicated below:

xx Civil Penalties Account, 95-1099.160

 Miscellaneous Receipt Account, 95-3220.160
(Disgorgement)

Tim Collins
Signature

10-05-07
Date

27044182678

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT: J. Nichols Patrick**

MUR: 5889

6
7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Bill Maiers, Campaign Manager for Cubin for Congress. *See* 2 U.S.C § 437g(a)(1). The
10 complaint alleges that Republicans for Trauner ("RFT"), a committee active in the 2006 general
11 election for U.S. Representative from Wyoming, along with J. Nichols Patrick (Chairman of
12 RFT) and Stephen Simonton (founder of RFT), failed to report electioneering communications,
13 failed to file a statement of organization with the Commission and failed to report receipts and
14 disbursements, all in violation of the Federal Election Campaign Act of 1971, as amended ("the
15 Act"). *See* 2 U.S.C §§ 434(f), 433(a), and 434(a)(4) The complaint asserts that RFT funded a
16 newspaper advertisement, mailed flyers to 22,000 households across the State of Wyoming, and
17 funded and produced radio advertisements Copies of all three communications were included
18 with the complaint Each communication explicitly calls for the election of Gary Trauner; the
19 newspaper advertisement and the flyer also explicitly call for the defeat of Representative Cubin.
20 J. Nichols Patrick did not respond to the complaint ¹

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 RFT raised \$28,471.00 and spent \$26,622.52 on independent expenditures supporting the
23 election of Gary Trauner, the Democratic candidate, and opposing the re-election of

¹ Public information indicates that Patrick is president of Rocky Mountain, Inc., a construction firm located in Cody, Wyoming. Patrick is not listed in Commission records as making any contributions in connection with federal elections. In press articles regarding RFT, Stephen Simonton is the sole individual reportedly speaking on behalf of RFT. *See, e.g.,* Richard Reeder, *Lawyer Launches Anti-Cubin 'Republicans for Trauner,'* CODY ENTERPRISE, September 25, 2006.

27044182679

1 Representative Barbara Cubin, the Republican candidate. RFT initially registered and filed
2 reports with the Wyoming Secretary of State but failed to timely register and report with the
3 Federal Election Commission

4 The complaint named J Nichols Patrick as the RFT Chairman. The available
5 information, however, does not suggest personal liability as to him. Accordingly, there is no
6 reason to believe that J Nichols Patrick violated the Act in connection with this matter.

27044182680

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Stephen Simonton

MUR: 5889

6
7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Bill Maers, Campaign Manager for Cubin for Congress. *See* 2 U.S.C. § 437g(a)(1). The
10 complaint alleges that Republicans for Trauner ("RFT"), a committee active in the 2006 general
11 election for U.S Representative from Wyoming, along with Stephen Simonton (founder of RFT),
12 and J Nichols Patrick (Chairman of RFT), (together, "the Committee"), failed to report
13 electioneering communications, failed to file a statement of organization with the Commission
14 and failed to report receipts and disbursements, all in violation of the Federal Election Campaign
15 Act of 1971, as amended ("the Act"). *See* 2 U.S.C. §§ 434(f), 433(a), and 434(a)(4) The
16 complaint asserts that RFT funded a newspaper advertisement, mailed flyers to 22,000
17 households across the State of Wyoming, and funded and produced radio advertisements Copies
18 of all three communications were included with the complaint Each communication explicitly
19 calls for the election of Gary Trauner; the newspaper advertisement and the flyer also explicitly
20 call for the defeat of Representative Cubin.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 RFT raised \$28,471.00 and spent \$26,622.52 on independent expenditures supporting the
23 election of Gary Trauner, the Democratic candidate, and opposing the re-election of
24 Representative Barbara Cubin, the Republican candidate RFT initially registered and filed
25 reports with the Wyoming Secretary of State but failed to timely register and report with the
26 Federal Election Commission

27044182681

1 Stephen Simonton filed a response to the complaint, in which he purports to describe the
2 Committee's "intent and actions."¹ Simonton states that the Committee decided to initiate a
3 campaign against the re-election of Representative Cubin after the August 22, 2006 primary
4 election. The Committee "checked with a friend who is familiar with state-wide campaigns, as
5 she has been involved in several and was responsible for filing reports in those campaigns."
6 Simonton states that this friend did not know, and the Committee did not figure out in a timely
7 manner, that because Representative Cubin was a federal candidate, RFT was subject to federal
8 filing requirements as well as state filing requirements.

9 Simonton asserts that before beginning RFT's activity, the Committee properly filed a
10 Statement of Formation by Political Action Committee with the Secretary of State for the State of
11 Wyoming on September 9, 2006. The Committee subsequently filed Statements of Receipts and
12 Expenditures with the State of Wyoming on October 27, 2006 and on November 15, 2006.
13 Simonton's response contains copies of all three filings. According to Simonton, the Committee
14 was not aware of its obligation to file with the Commission until November 1, 2006, when
15 Simonton learned through a newspaper reporter that RFT might also need to file with the
16 Commission. Simonton further recounts that the Committee "quickly checked and discovered
17 that the reporter was correct." Simonton response at 2. On that same day, Simonton asserts, the

¹ Public information indicates that Simonton is an attorney located in Cody, Wyoming, with a very limited record of contributions in connection with federal elections. Commission records indicate that Simonton donated \$1,700 to RFT and \$300 to Trauner for Congress but to no other committees during the 2006 election cycle. In press articles regarding RFT, Simonton is the sole individual reportedly speaking on behalf of RFT. *See, e.g.,* Richard Reeder, *Lawyer Launches Anti-Cubin 'Republicans for Trauner,'* CODY ENTERPRISE, September 25, 2006.

27044182682

1 Committee called and spoke with “one of the FEC personnel at the toll free number of the
2 Federal Election Commission ” *Id.* With assistance from the Commission personnel, Simonton
3 recounts, RFT prepared a Statement of Organization and sent it by overnight delivery to the
4 Commission. The next day, November 2, 2006, RFT filed by overnight mail Form 5, disclosing
5 RFT’s contributions received and independent expenditures made through October 31, 2006.
6 RFT later timely filed a Post-General Election Report with the Commission.

7 Finally, Simonton asserts that RFT was “totally independent of Mr. Trauner’s campaign
8 and organization.” Simonton response at 1 According to a press article, Simonton
9 acknowledged speaking with Trauner about issues but states that he “never asked Trauner’s
10 permission or told him he was out doing anything for him ” Trauner reportedly stated that he
11 was pleased to have RFT’s support but that RFT carried out its activity “without any real input”
12 from Trauner’s campaign and that Simonton “didn’t tell him what [Simonton’s] plan was.”
13 *Trauner Nets Unlikely Ally*, WYOMING TRIBUNE-EAGLE, October 7, 2006.

14 The complaint named Stephen Simonton as the RFT founder. The available information,
15 however, does not suggest personal liability as to him. Accordingly, there is no reason to believe
16 that Stephen Simonton violated the Act in connection with this matter.

27044182683